

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Fifty Below Sales & Marketing, Inc.,
a Minnesota Corporation,

Plaintiff,

v.

United States of America,

Defendant.

**MEMORANDUM OPINION
AND ORDER**

Civ. No. 05-1380 ADM/RLE

United States of America,

Plaintiff,

Civ. No. 06-1112 ADM/RLE

v.

Fifty Below Sales & Marketing, Inc.,
a Minnesota Corporation,

Defendant.

Fifty Below Sales & Marketing, Inc.,
a Minnesota Corporation,

Plaintiff,

Civ. No. 06-1269 ADM/RLE

v.

United States of America,

Defendant.

Neal J. Shapiro, Esq. and Saul A. Bernick, Esq., Bernick and Lifson, P.A., Minneapolis, MN, on behalf of Fifty Below Sales & Marketing, Inc.

Michael R. Pahl, Esq. and Mychal A. Bruggeman, Esq., Assistant United States Attorneys, Washington, DC, on behalf of United States of America.

On April 18, 2006, oral argument before the undersigned United States District Judge

was heard on the United States of America's ("United States") Motion for Summary Judgment [Docket No. 11]¹ and Fifty Below Sales & Marketing, Inc.'s ("Fifty Below") Motion for Summary Judgment [Docket No. 15]. On May 5, 2006, the Court issued an Order [Docket No. 47] holding the summary judgment motions in abeyance until July 1, 2006 so that Fifty Below could have an opportunity to negotiate a settlement agreement directly with the Internal Revenue Service. On June 26, 2006, counsel for the United States informed the Court by letter [Docket No. 52] that the parties have been unable to settle the case. As a result, summary judgment is now appropriate.

Courts are to review collection due process ("CDP") hearing determinations for an abuse of discretion. See, e.g., H.R. Conf. Rep. No. 105-599, at 266 (1998); Comfort Plus Health Care, Inc. v. Commissioner, 2005 WL 1656914, at *4 (D. Minn. July 14, 2005); Goza v. Commissioner, 114 T.C. 176, 181-82 (2000). As stated in the May 5, 2006 Order, a review of the Appeals Officer's ("AO") Notice of Determination Letter and his CDP hearing notes reveals that the AO considered Fifty Below's proposed installment agreement and balanced the United States and Fifty Below's competing concerns. Pahl Decl. [Docket No. 12] Ex. 1; Bernick Aff. [Docket No. 17] Ex. F. As a result, the AO did not abuse his discretion by rejecting Fifty Below's proposed installment agreement.

The Court's ruling also resolves civil cases 06-1112 and 06-1269. All three cases have common issues of fact and law, and the parties have agreed to be bound by the Court's summary judgment decision in all three cases.

Based upon the foregoing, and all the files, records, and proceedings herein, as well as

¹ All docket citations are from civil case 05-1380.

for the reasons stated in the Court's May 5, 2006 Order, **IT IS HEREBY ORDERED** that the United States' Motion for Summary Judgment [Docket No. 11] is **GRANTED** and Fifty Below's Motion for Summary Judgment [Docket No. 15] is **DENIED**.

**LET JUDGMENTS BE ENTERED ACCORDINGLY IN CASE FILE NUMBERS
05-1380, 06-1112, AND 06-1269.**

BY THE COURT:

s/ Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: July 5, 2006